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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,028	11/25/2003	Russel Helfman	100354-589-NP	6518
24964	7590	04/13/2004		
GOODWIN PROCTER L.L.P 103 EISENHOWER PARKWAY ROSELAND, NJ 07068			EXAMINER GRILES, BETHANY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,028

Applicant(s)

HELFMAN, RUSSEL

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-8 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mack US 4800677.

3. Regarding claim 1, Mack discloses a top sheet 22, a backing sheet 20, one or more absorbent sheets 24 and a first frangible element 30 which extends parallel and partway along opposite sides of one dimension of the pad 10 and a second frangible element 30 located between the edges of one dimension which extends perpendicular from the first frangible element thereby forming ties (col 2, lines 30-34) integral with said pad 10 for tying the collection pad into a compact bundle for disposal.

Art Unit: 3643

4. Regarding claim 3, Mack discloses that the pad further comprises an odor attractant 46 impregnated in the pad to attract the animal to the pad.
5. Regarding claim 7, Mack discloses an odor deterrent in the form of a pine scent (col 2, line 18), which is a known deodorant.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mack US4800677.
8. Regarding claim 5, Mack does not disclose that the odor attractant is a fresh cut grass scent.
9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fresh cut grass scent as an odor attractant for the training pad, as Mack does disclose the use of other "outdoor" scents, such as pine. Since the applicant ascribes no specific criticality to the use of fresh cut grass odor, it would be obvious to one of ordinary skill in the art to substitute this scent for a myriad of other scents.
10. Regarding claim 6, Mack does not disclose that the backing sheet is green.

Art Unit: 3643

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the backing material of any desirable color, and the choice would be purely aesthetic for the human trainer.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mack in view of Spellman US 3626899.

13. Regarding claim 4, Mack does not disclose the use of allyl phenyl acetate.

14. Spellman discloses the use of allyl phenyl acetate as an odor attractant (Col 3, line 11-13).

15. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Spellman to the invention of Mack, inasmuch as Spellman discloses allyl phenyl acetate serves to attract young dogs to a pad.

16. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mack in view of Ochi US 5797347.

17. Regarding claim 8, Mack does not disclose that the absorbent sheets consist of an absorbent polymer.

18. Ochi discloses a core of absorbent polymer (col 2, line 7) between the top and bottom layers.

19. It would have been obvious to one of ordinary skill in the art to use absorptive polymer in the middle layers of the pad, of Mack, in view of the teaching of Ochi that polymer powders are excellent liquid absorbers.

Allowable Subject Matter

20. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mack US 4934316; Licciardo US6173675; Walker US5819688; Santioemmo US6436384; Ohta US 5954015; Reynolds US6209486; Ikegami et al. US6460484; Adolfsson et al. US6532897 ; Ikegami et al. US6553938 ; Lippincott US6684816 ; Townsend US5220884 ; Gun-Munro US5676094.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



blg

Robert P. Swiatek
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PRIMARY EXAMINER
ART UNIT ~~322~~ 3643

Bethany L. Griles
Examiner
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